

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on March 20, 2003 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 331, HB 453, HB 317, HB 579,
3/17/2003
Executive Action: HB 317, HB 61, HB 247

HEARING ON HB 331

Sponsor: REP. STEVE GALLUS, HD 35, BUTTE

Proponents: Carl Schweitzer, Montana Rental Dealers Association
Rollin Schumaker, ABC Rental, Bozeman
Patty Scott, East Helena Rental
Brad Griffin, Montana Equipment Dealers Association
Clyde Funk, High Country Rental, Livingston
Dan Jacques, A-1 Rental, Helena
Kevin Pierson, Strobel's Rental, Great Falls

Opponents: None

Opening Statement by Sponsor:

REP. STEVE GALLUS, HD 35, BUTTE, introduced HB 331. He explained that the bill changed the code to add a criminal element to this portion of the statute. The amendments provide a civil penalty. This bill addresses problems rental businesses in this state are facing. Oftentimes the renter is a subcontractor on a project and will rent fairly expensive equipment. This may include a backhoe or some other larger machine. What happens on occasion is when the business is closed, the trailer with the tractor on the back of it will be parked in front of the business and the person who had signed the agreement to rent the equipment is gone and will never be heard from again. The bill could be in the thousands of dollars. The person who uses the equipment and does not pay for its use does so knowingly and purposely and should be liable for criminal charges under the criminal statute. The criminal penalty was changed to a civil penalty on the House Floor.

Proponents' Testimony:

Carl Schweitzer, Montana Rental Dealers Association, provided a copy of amendments, **EXHIBIT(jus59a01)**. He explained there were three parts to the bill. The first part amended the criminal offense where failure to return equipment had been a criminal offense. The words "or pay for" have been added. In (2) the words, "but is not a prerequisite to" have also been added. This portion addresses false identification for the purposes of obtaining a rental or lease agreement. Some county attorneys were requiring that false identification needed to be present before the case would even be considered. That was not the

intent of this section of law. The words are for clarification purposes. Subsection (3) has been stricken in its entirety. Again, the county attorneys maintained that if a certified letter was not provided within 72 hours, an offense had not been committed. That was never the intent of that section of law, but is how it was being interpreted.

On the House Floor the word "civil" was added to the bill. This is problematic and they hoped the Committee would review and reconsider this language change. The bill has been taken from a criminal offense level to a civil offense level. Failure to return equipment, which was previously a criminal offense, would now be simply a civil offense. This involves stealing. The wording "in excess of \$250" was added. They would like to see that wording deleted from the bill. All the other amendments simply restore the language back to its previous state.

Rollin Schumaker, ABC Rental, Bozeman, commented that the intent of the bill was to assist them in receiving payment for their bills. As their businesses become larger and the dollar volumes continue to grow, they are losing money at an increasing rate. It is very easy to go from a \$1,000 bill to a \$10,000 bill in a matter of weeks. The House amendments make it very difficult for rental businesses to attempt to recover these funds. The rental businesses generally spend approximately half of their time in bill collection.

Patty Scott, East Helena Rental, claimed the intent of the bill was to provide more tools for the businesses to collect for rentals. The amendments have taken the teeth out of the bill. People may rent a backhoe for \$600 to \$1,000 a week. The contracts are signed and the people will pay the fee for a week or two weeks. They then continue to keep the equipment and say they will be in to pay but do not show up to do so. The equipment will then be found parked outside the gate. The bill may be \$3,000 at that point. Driver licenses and credit cards are required by most businesses.

Brad Griffin, Montana Equipment Dealers Association, stated many of their dealers rent their equipment before it is sold. The dealer may give the equipment to a customer for a month. The customer will say they need it for another two months and the rental agreement is extended because there have been no problems with the account. One dealer in Billings lost \$100,000 of rental value to a customer who paid up front for the first month and then welshed on the last two months of what turned out to be a three-month lease.

Clyde Funk, High Country Rental, Livingston, claimed customers will rent from them two or three times and appear to be a good customer. The fourth or fifth time they may run up \$1,000 in fees which they never pay.

Dan Jacques, A-1 Rental, Helena, asked that the bill be put back to its original form. He would like to use the bill as a deterrent. He would like to have it on his counter so potential customers can see their responsibility.

Kevin Pierson, Strobel's Rental, Great Falls, remarked that there have been comments about the loss of rental fees being a cost of doing business. This is not a cost for people selling a product. If the product is not paid for, the customer can be arrested. Rental products have only a certain life span which is depleted every time someone rents the equipment. It is important to have a deterrent for those customers who are stealing from his business.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. JERRY O'NEIL requested clarification of the amendment in (4). He believed the language could be construed as a debtor's prison. **Mr. Schweitzer** pointed out the people this bill addresses are thieves. The items they are taking have a limited life span. They are stealing the use of the equipment. This is like stealing from a gas station or a motel.

SEN. O'NEIL remarked when he provides a mediation, there is no life span at all following the completion of the mediation. Why shouldn't he be able to put these people in prison if they do not pay the mediation fee? **REP. GALLUS** maintained the difference would be the mediation fee that was not paid would be a debt because the client may or may not have the funds to pay. This bill addresses the people who systematically go from one business to another and run up bills for their subcontracting business which they have no intent of paying. This is done knowingly and purposely. They are committing a crime.

SEN. O'NEIL questioned why the bill did not address the person who acted in this manner repeatedly instead of the person who would do so on a one-time basis. **REP. GALLUS** claimed that he could be agreeable with such an amendment but the number of times a person did not pay the fee should not count as much as knowingly and purposely doing the same.

SEN. O'NEIL maintained currently law covered the situation wherein if the equipment was not returned, the customer could be put in prison. Why is it necessary to include a debtor's prison for not paying the fee? **REP. GALLUS** agreed that theft would be involved if the equipment was not returned. The question for the Committee is whether or not they believe it is a criminal offense to knowingly and purposely return the equipment and not pay for the portion of the rental time under contract.

SEN. MIKE WHEAT noted this was similar to the crime of bad checks. He questioned a fiscal note in regard to incarceration. **REP. GALLUS** explained that the Budget Office is reluctant to make predictions into the future on what may or may not happen. Since this is a new crime, there is no existing statistical information for an accurate projection. The intent of the bill is for it to be a deterrent. The customer needs to know that if they do not pay the fee, the county prosecutor could seek a criminal charge against the individual.

SEN. WHEAT asked **Mr. Schumaker** if he has asked the county attorney for help in this matter. **Mr. Schumaker** stated he has not done so because this is a civil offense. They have used the small claims courts. Following a judgment it is still necessary to go through all the asset searches. By this time, the person who owes the money has disappeared or it may be the case of trying to get blood out of a turnip.

SEN. WHEAT questioned the amount of the annual loss to the business in regard to unpaid rental fees. **Mr. Schumaker** claimed that he had written off approximately \$75,000 last year.

{Tape: 1; Side: B}

SEN. JEFF MANGAN remarked that if an individual rented a piece of equipment he or she had the ability to use that equipment on a "24/7" basis until it was brought back to the business. **Mr. Schweitzer** affirmed that was the case.

SEN. MANGAN questioned the language in (4)(b) which addressed the term in the county detention center. **Mr. Schweitzer** explained the original language was ten years and the amended version was changed to 12 months. This language should have also been stricken in his amendments provided to the Committee.

SEN. MANGAN noted the term "county detention center" was added to the language. He believed the person would be ordered to the Department of Corrections (DOC) and the DOC would then decide where the individual would be placed. Our county detention centers or jails are not under the state prison system but the

regional detention centers would be. He saw problems with the language. **Mr. Schweitzer** noted that the House made these changes and agreed they needed more work.

SEN. MANGAN asked **Mr. Pierson** if he owned the equipment which was leased and also whether these purchases were made via bank loans. **Mr. Pierson** affirmed.

SEN. MANGAN further noted if the equipment was being rented but the customer was not paying the fee, the business owner would still have the obligation to pay the notes on the equipment. **Mr. Pierson** affirmed.

SEN. BRENT CROMLEY remarked that 90 percent of the application of the statute would be to video rentals. **REP. GALLUS** maintained the idea for this bill was presented to him in the 2001 Legislative Session and he opposed the bill because he believed a video rental should not fall under this bill. The bill has a bottom line of \$250 that would be applicable under this statute if it were to become law. That would amount to a lot of movies. **Mr. Schweitzer** noted that the original bill did not contain the language in regard to the \$250 bottom line. This is a good idea and they would support having the language in the bill.

SEN. CROMLEY questioned whether the intent of this bill should be made universal for all services and goods. **Mr. Schweitzer** maintained the bill addressed a specific issue and they did not cover the waterfront with other areas that could be reviewed. This is a huge issue for the rental industry. They did not consider other areas where people may be stealing services.

SEN. GARY PERRY asked **Mr. Schumaker** what steps he used to collect rental fees. **Mr. Schumaker** explained if a homeowner was involved, they would look to the lien laws. This needed to be done within the first 20 days of the person taking the equipment. If a lien is filed within 30 days of the use of the equipment, it is necessary to go through the civil process. In regard to a commercial job, it is necessary to lien the job. There is a 90-day process involved. He lost \$50,000 on a job in Big Sky last year. He had done business with a major contractor in Bozeman. They rented equipment to a subcontractor on his job but the job didn't go well for the subcontractor and he was removed from the job. The general contractor stated he would pay for the subcontractor's use of the equipment. He took him at his word and did not file a lien on the job. The subcontractor has since filed bankruptcy.

SEN. PERRY noted page 1, line 18 of the bill refers to failing to return property or to fully pay within two business days.

Sections 3 (a) and (b) use the language "who fails to return" or "fails to pay" but the time frame is not specified. If a person knowingly holds something for three days, would he be subject to jail time. **REP. GALLUS** remarked it is necessary to allow the county prosecutors and judges to use their discretion on case specific decisions.

SEN. PERRY questioned the percentage of the issues presented in the bill which would be caused by disputes between the customer and the business owner. **Mr. Pierson** believed 90 percent of the issues involved were not due to disputes. Ten percent of the people may have had a problem with the equipment and did not believe they should have to pay the full fee.

SEN. DAN MCGEE maintained he owned a business for 13 years and there are people who still owe him money. If the business owner is not able to make payments on their equipment due to customers failing to pay rental fees, what type of action is available to the bank against the business owner. Is this civil or criminal? **Mr. Pierson** noted this would be civil.

SEN. MCGEE noted that the business owner is actually renting the bank's money. **Mr. Pierson** affirmed.

SEN. MCGEE raised a concern in regard to a civil remedy between the lending institution and the rental owner and a criminal remedy between the rental owner and the customer. **Mr. Pierson** noted the problem. He believed there should be a law somewhere between the civil remedy and the criminal remedy. He is not in favor of bankruptcy. If a person incurs a debt, his or her future earnings need to be captured to pay what they owe.

SEN. CROMLEY believed most of the problems could be cured by the use of credit cards. **REP. GALLUS** stated that the industry does use credit cards. Debit cards are worthless if the money is not in the account. They can be used to rent cars, reserve a hotel room, or rent a piece of equipment. With or without credit cards there would still be room for the people who knowingly and purposely go out to defraud these small businesses. They will find a way to get around credit cards.

SEN. O'NEIL asked whether the theft of services statute had been considered. **Mr. Schweitzer** stated he had not researched the statute at this time.

{Tape: 2; Side: A}

SEN. WHEAT read language from 45-6-305 as follows: "A person commits the offense of theft when he obtains the temporary use of

property of another which is available only for hire by means of deception or knowing that such use is without the consent of the person providing the property." This addresses a crime that could be prosecuted under current law. **REP. GALLUS** remarked that a certified letter was a major point of the legislation as well. County prosecutors will not pursue these cases. If there are existing statutes, they are not being utilized. **Mr. Pierson** believed the statute pertained to the use of the equipment as a theft of the equipment but would not pertain to the dollar value of the use of the equipment.

SEN. PERRY questioned the type of person committing the crime. **Mr. Schumaker** noted this would cover a broad spectrum of people. It is important to leave the bottom line at \$250. They do not want to go after the lower end wage earner.

SEN. MANGAN remarked if a mediation service were not paid for, another client could be obtained the next day. If a piece of equipment is rented out and it is not brought back, they cannot rent that piece of equipment out and retain any other future earnings until it comes back. He pointed out that this was a significant difference between services being discussed at the hearing. **REP. GALLUS** affirmed and added if he needed an emergency operation and could not pay the doctor, this is a part of the business of the medical profession. This bill is about people having deceptive thoughts and using a criminal element of knowingly deceiving a small business owner for gain.

Closing by Sponsor:

REP. GALLUS noted there were problems with the language in the bill due to the number of amendments. He asked the Committee to work on the language and would be amenable to the Committee's recommendations.

HEARING ON HB 453

Sponsor: **REP. HOLLY RASER, HD 70, MISSOULA**

Proponents: **Mike Mahoney, Warden of the Montana State Prison**

Opponents: **None**

Opening Statement by Sponsor:

REP. HOLLY RASER, HD 70, MISSOULA, introduced HB 453. This bill provides for the use of a prison inmate's funds and income to pay the medical and dental expenses they may incur while in incarceration. Half of the bill was amended into HB 134. This

bill revised the prison accounting system. An amendment was added by the Committee that allowed the Department of Corrections to use a portion of the funds in the account to pay for medical and dental expenses. Page 2, lines 8 thru 10 of HB 453 will not only allow the existing accounting system to pay for an inmate's medical and dental expenses but will also allow the Department to investigate an inmate's outside income that could help pay their medical and dental expenses. Convicted offenders currently pay restitution to the victim, the costs of their incarceration, the costs of their chemical dependency programs, and the costs of the victim notification process.

Proponents' Testimony:

Mike Mahoney, Warden of the Montana State Prison, remarked that currently with the problem of methamphetamine, they are determining that this has a profound impact on dental enamel. The dental care problem is very profound. In instances where the inmate has the financial means, the bill would enable the Department to enjoin this member of the population to help with the costs. This does not alleviate the Department of its responsibility to provide basic health care services to the inmate population.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. MCGEE asked the amount of funds spent on medical care on an annual basis at the Montana State Prison. **Mr. Mahoney** noted the budget for the infirmary operation is approximately \$1.2 million. He added there are approximately 1308 inmates at the Montana State Prison and approximately 42 inmates are on leave to custody. **REP. RASER** explained that according to the Legislative Division Performance Audit of inmate medical services, in 1999 the average cost for basic medical care of an adult male at the Montana State Prison was \$4,106.

SEN. CROMLEY asked for further information in regard to whether or not an inmate would sign anything in regard to payment for treatment. At the current time, was the inmate obligated to repay the prison. **Mr. Mahoney** was not aware of an inmate having any responsibility to be enjoined in sharing in health care costs. If an inmate is in the infirmary indicating that his knee was blown out while exercising in the yard, this would be reviewed by the medical review panel to determine whether the procedure were a required procedure or an elective procedure.

With this bill, if the treatment is appropriate and the inmate has the means to assist in the cost, it would be appropriate to have him share in the costs. This could have an impact on the types of medical treatment that the population requests. There is a propensity for the inmates to see their incarceration as a great opportunity to have all of their health care issues addressed at the cost of the state.

SEN. CROMLEY noted his understanding of the bill was the Department was looking toward recovering medical bills from inmates readily able to pay this amount from their income or savings. **Mr. Mahoney** affirmed and added that this is a moving target. Inmates are fairly litigious and there are times they have a settlement or inheritance. If one of these situations arise, the Department would like to have the opportunity to enjoin some of those funds to offset the inmate's health care costs.

SEN. CROMLEY claimed that was a worthy goal but did not believe the last sentence of the bill would accomplish that goal. The language refers to income and does not refer to assets. **Mr. Mahoney** maintained he would be amenable to an amendment to further clarify the language.

SEN. O'NEIL raised a concern that income not be taken away from the spouse or children of the inmate, if the income was needed for living expenses. **Mr. Mahoney** noted the intent of the Department is to place more responsibility and accountability with the inmate population to pay such items as child support and restitution. It is not the intent of the Department to garner funds at the expense of family members.

Closing by Sponsor:

REP. RASER remarked the inmates are involved in a system of small co-payments for certain services. This is to limit frivolous access to medical care. This bill addresses the types of situations that occur from unanticipated medical expenses and it only addresses those inmates who do have the ability to pay. Her daughter is developmentally disabled and has a genetic problem that causes very bad teeth. Her dentist mentioned he had seen the same type of problems working with the inmate population when he was working in the prison. Her dentist did not take Medicaid patients due to the high cost of processing compared to what they were able to obtain for reimbursement. She ended up paying the entire bill. She believed this truly was an unfair situation. Someone who has been convicted of a crime and is in the institution by their choice is having their dental problems taken care of using taxpayer funds while people in situations like her

daughter are unable to come up with the funds for dental care. The intention of the bill is to provide that those who have the ability to pay for their own medical expenses do so. These funds should not be taken from families who need the funds to exist. If the inmate has the ability to pay, he should be responsible to do so.

{Tape: 2; Side: B}

HEARING ON HB 317

Sponsor: REP. JIM SHOCKLEY, HD 61, VICTOR

Proponents: None

Opponents: None

Opening Statement by Sponsor:

REP. JIM SHOCKLEY, HD 61, VICTOR, introduced HB 317. He stated that the Humane Society in Ravalli County is very concerned about being reimbursed for caring for animals that have been abused. These animals need protection, feeding, housing, etc. If someone is convicted of cruelty to animals, not only would they need to pay the veterinarian costs but they would also need to pay for the cost of caring for the animals. Page 2, lines 3-4 of the bill contains language that states, "including costs of care incurred by a public or private animal control agency or humane animal treatment shelter;".

Proponents' Testimony:

None

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. CROMLEY raised a concern about the word "including" on line 3, page 4. He suggested using the word "plus" costs of care.

REP. SHOCKLEY preferred using the word "and".

REP. MCGEE requested the new language be set out as a subsection. The two items are not necessarily related by definition. **REP. SHOCKLEY** agreed to the change.

SEN. MANGAN noted the current language would be permissive for the courts. He questioned how often the court would actually order the defendant to pay what is currently set out in the statute. **REP. SHOCKLEY** stated he would have no problem changing the language on line 1 to the word "will" instead of "may".

Closing by Sponsor:

REP. SHOCKLEY closed on HB 317.

HEARING ON HB 579

Sponsor: **REP. JIM SHOCKLEY, HD 61, VICTOR**

Proponents: **Gilda Clancy, Montana Shooting Sports Association and the Montana Women's Shooting Association**

Opponents: **None**

Opening Statement by Sponsor:

REP. JIM SHOCKLEY, HD 61, VICTOR, introduced HB 579. He explained the purpose of the bill was to allow persons to know their rights. There are two situations where a person involved in the court system may have his or her right to bear arms adversely impacted. The domestic abuse portion of the criminal code as well as the restraining order injunction situation are when these two situations may occur.

Page 4, line 21, provides that in all circumstances stated above, "(f) that conviction may result in the loss of various rights regarding firearms under state and federal law;". At this point, the person is on notice to check with his or her attorney in regard to an impact on his or her right to bear arms. In domestic abuse situations, a conviction would preclude that person from bearing arms. This would address the situation of a person paying a \$50 fine for a misdemeanor without realizing the full impact involved. A temporary restraining order may be granted ex parte. This only exists for 20 days. A person then may receive a temporary injunction which can be in effect for up to one year. Under federal law, if the injunction states the person cannot bear arms, he or she is advised that if the injunction is violated, this is a violation of federal law.

Proponents' Testimony:

Gilda Clancy, Montana Shooting Sports Association and the Montana Women's Shooting Association, provided written testimony in support of HB 579, **EXHIBIT(jus59a02)**.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

CHAIRMAN DUANE GRIMES remarked on page 3, line 18, the language stated that a court may issue a temporary restraining order for a period not to exceed 20 days. More often than not this involves a crisis situation. Tensions are high and there is fear. The judge will make a decision. He questioned whether the additional language in (6) would delay the process for a temporary restraining order (TRO). **REP. SHOCKLEY** claimed the language would not delay the process. There are situations where a TRO is essential and it is entirely proper that the right to bear arms be restricted. This only involves a 20 day time frame. The next step is a temporary injunction. The language states there will be a hearing on the temporary injunction and at that time, the person will be advised that if a weapons clause is included, a violation of the injunction would be a violation of federal law. There is no way to give notice at the time of the TRO.

SEN. MANGAN remarked that the language did not contain a list of the other rights that a TRO would otherwise infringe. This could include the freedom of movement, speech, etc. One right was selected over other rights. He further questioned the time line in regard to appealing this right. **REP. SHOCKLEY** clarified it would be common for the language to state that the parties cannot be within 500 feet of each other. If a person violated that portion of the order, the TRO would be violated but a federal law would not be violated. If the injunction states that the person cannot carry a gun, a violation of the injunction would violate the federal law. This is why it is addressed specifically under the bill.

SEN. O'NEIL stated that a person may not show up at a hearing and in that case this person would not be informed in regard to the person's right to keep and bear arms. He believed the language should be contained in the notice. **REP. SHOCKLEY** did not see this as a bad idea, although people who have been properly noticed should attend hearings. This would be a good amendment.

SEN. WHEAT remarked that the first sentence in (6) addressed a temporary injunction while the second sentence in (6) addressed a temporary restraining order. He suggested the new language be moved into (4). **REP. SHOCKLEY** claimed the emphasis in (6) was the temporary injunction. This person would be served with a notice and a time of hearing. The TRO may have also specified a time for the hearing. A response may be filed within 20 days

after service of the notice of motion and this could relate to the temporary injunction or the restraining order itself may set up a time for a hearing on the issue.

SEN. WHEAT asked whether the bill should have a fiscal note. Once people are advised they may stand to lose their right to bear arms, they will demand and require a jury trial before they plead to anything. **REP. SHOCKLEY** did not believe a fiscal note could be crafted to address the issue and the impact would fall on the counties, in any event. There will be increased litigation when people find out they may lose their right to bear arms.

{Tape: 3; Side: A}

SEN. MANGAN asked what language would generally be contained in the notice in regard to the fact that a temporary injunction was being sought. **REP. SHOCKLEY** believed the notice would state there would be a hearing at a time and date certain. Attached would be a copy of the TRO.

SEN. MANGAN raised a concern regarding the consequences involved if the notice stated a person's firearm may be taken away or limited. He or she may not understand the meaning and may take this out on the person filing for the injunction. **REP. SHOCKLEY** noted he may be right but he also had a difficult time not advising someone of their rights.

SEN. MANGAN was concerned with a possible amendment from **SEN. O'NEIL** to place the language in the notice. Originally, this was not the intent of the bill. He stressed the need to consider the consequences involved. **REP. SHOCKLEY** maintained the person should know the consequences of violation of the order. If the notice included the warning that the person's right to bear arms could be impaired or restricted during the term of the order of the injunction and a violation of the injunction was a violation of a federal law, the person should have that knowledge. If the person does not attend the hearing, he or she may not be aware of the issue. The federal law is designed to encourage people to obey the order. If the TRO is attached to the notice, that would give the notice. It could also be that the provision would not be placed until the temporary injunction hearing.

SEN. O'NEIL maintained that in regard to due process, the Constitution contains a right of notice and a right to be heard. He asked **Al Smith, Montana Trial Lawyers Association**, if a person's due process rights would be violated if that person was given notice of a hearing but was not advised that his or her right to bear arms would be taken away at that hearing. **Mr.**

Smith noted the Montana Constitution does contain the right to keep and bear arms. There is case law in Montana that states a violation of a constitutional right is an actionable offense. He believed the bill covered the due process and notice provisions.

SEN. O'NEIL questioned whether it would more proper for the notice to be given by the judge at the hearing or for the notice to be given to the person prior to the hearing. **Mr. Smith** noted that in many proceedings, the rights at risk are not fully explained until the point where the person appears before the judge. He has never seen a due process claim based upon those proceedings, which would be similar. His personal opinion was that it would be better to keep the language in the original bill. There are some folks who may be unnecessarily inflamed if this information was provided on a piece of paper without the explanation of the judge.

SEN. PERRY questioned whether there would be another means to achieve the same result as the new language on page 3. Lines 25 through 27 are not specific. **REP. SHOCKLEY** explained that at the point the person is on notice, he or she should ask the justice of the peace what rights may be lost. The language in the bill is designed to inform the person that there may be a potential problem. The notice will include the TRO. If the TRO contains the gun provision, the person will be on notice.

SEN. PERRY asked for further clarification in regard to a TRO being issued without requiring notice to the other party. **REP. SHOCKLEY** explained a TRO is for use in an emergency situation. If applied for, it is almost always given. One of the parties in a domestic situation is physically threatening or abusing the other party. It is imperative that the person be restrained. The order may state that the person cannot come within 1500 feet of the other party so there is no more violence. This is an emergency situation and the TRO can only last for 20 days or less. There is no time to give the other party notice. The court's intervention is needed to protect the abused party at that moment. Law enforcement needs an order from the court to enforce the barrier between the parties.

Closing by Sponsor:

REP. SHOCKLEY encouraged **SEN. WHEAT** to amend page 3, line 22. If the language is unclear to both of them, who are attorneys, it would need to be clarified.

EXECUTIVE ACTION ON HB 317

Motion: **SEN. PERRY** moved that **HB 317 BE CONCURRED IN.**

Substitute Motion: SEN. MCGEE moved that HB 317 BE AMENDED.

Discussion:

Ms. Lane explained SEN. MCGEE asked her to prepare an amendment for page 2, lines 3 and 4. This would involve dividing (3)(a) into (1) and (2) or simply repeat the first part of the subsection on line 2 and make a new (b). This would read, "require the defendant to pay all reasonable costs of care of the affected animal that is incurred by a public or private animal control agency or humane animal treatment shelter;". Subsection (b) would become (c).

Vote: The motion carried unanimously.

Motion/Vote: SEN. MCGEE moved that HB 317 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON HB 61

Motion: SEN. CROMLEY moved that HB 61 BE CONCURRED IN.

Discussion:

SEN. CROMLEY remarked if the Committee members had a beer in front of them and a 17 year old was seated in the chambers, it was the opinion of law enforcement that the person would not be in the possession of alcohol. On the other hand, if the Committee was a group of 17 year olds seated in the same location and the 17 year-old was seated in the same location without a beer, he or she would be in possession of alcohol. The bill clarifies that the mere fact of being in a place where other persons possess alcohol, is not a crime.

CHAIRMAN GRIMES maintained that currently the young person would have some doubt as to whether or not they should be around people who are possessing or consuming alcohol. The bill would remove inhibitions the young person may have for attending parties, keggers, etc. On college campuses, binge drinking is around the 50 percent level.

SEN. MCGEE claimed when a person commits a crime, that person is due the punishment that goes with the crime. If they have not committed the crime, they should not be punished for an association. Designated drivers are the case in point. His daughters have been designated drivers for people they associate with. Without a designated driver, people will not get home safely. If the person simply rang the doorbell and the person

they were providing a ride for came out of the house, there would be no problem. However, if the person crossed the threshold, he or she would be guilty by association. Also, at a wedding reception the punch could be spiked. A six year old attending the reception would be "in association".

{Tape: 3; Side: B}

SEN. MANGAN remarked that the full Senate has made a decision that an association was not an offense. The language of our current law is that a person knowingly consumes alcohol or has alcohol in the person's possession. The bill does clarify the language. In regard to SB 362, there were some very strong sanctions for those youth who knowingly consume alcohol or have alcohol in their possession. The sanctions involved driver's license confiscation, parents attending classes, etc. The persons in the zone of control who are being good role models, mentors, and leaders for our youth will be given the same sanctions as the youth who are knowingly and purposely breaking the law. This is not a message we want to send. The role model is a very positive part of this issue. He was in support of the bill but it was not an easy task to arrive at this decision.

SEN. WHEAT also struggled with the bill. He tended to favor the bill but believed it was important that there be a warning issued to the youth and their parents that they were in fact at a location at a time when something illegal was going on. It would not charge those who are not actually in possession, but would carry a stigma of being at a location where unlawful conduct is taking place.

CHAIRMAN GRIMES disagreed with **SEN. MANGAN** that a decision was reached as to whether or not association was an offense. It was eliminated from the bill. He did offer an amendment on SB 362 in regard to a qualifying adjective before the word possession. A person's immediate possession would further define the matter. There was testimony at the Interim DUI Task Force involving instances where the designated driver was charged with a minor in possession (MIP) violation. The law needs to be clarified. This decision had the same implications as the open container bill. He could support the bill with some qualifying language in regard to possession.

SEN. CROMLEY remarked that the words "immediate possession" would be the intent of the bill. He objected to the continued reference to keggers. He suggested using the word "weddings". At a wedding, if everyone over the age of 21 was drinking alcohol, there would be no illegal activity. The person under the age of 21 could be arrested. During the testimony, the

police chief from Havre stated that his daughter had pled guilty to a minor in possession charge. When asked whether he believed his daughter was guilty, he remarked that she was. **SEN. CROMLEY** did not believe she was guilty and also that the system did not work very well in that instance. Another case was brought out at the hearing where the person was found not guilty, even though they were at the location, but it cost the individual \$2,000 to prove this. This bill would clarify the situation.

SEN. PERRY remarked that there are 17 year olds who are more mature and responsible than certain 40 year old persons. There isn't a similar law in regard to drug possession. The drug problem is more serious than the alcohol problem.

SEN. O'NEIL claimed it would be easy to tell if a minor possessed alcohol by using a Breathalyzer. **REP. LASLOVICH** had stated that when he was at a party where the other youth were consuming alcohol, that made them feel guilty. This has some redeeming value. The bill is a necessary bill.

CHAIRMAN GRIMES remarked that ingestion would not constitute possession.

SEN. MCGEE noted the division line for the bill involved helping police powers versus the presumption of innocence. **Chief Olson** testified that there could be times when innocent people were cited and charged but the court system works for the innocent. If a crime is created, there needs to be an action to go with the crime. If the person has not accomplished the action, the person is not guilty. The problem is consuming the alcohol and not the fact that the people are underage and happen to be in the wrong place at the wrong time.

CHAIRMAN GRIMES maintained if the bill passed, there would be dancing in the streets. The youth will know exactly what the law states and it will take an inhibition off of them. This bill is going absolutely the wrong direction. It will have an immediate impact.

SEN. WHEAT remarked that the U.S. Supreme Court found vagrancy laws to be unconstitutional because vagrancy laws deal with someone who had not really committed a crime. This bill is similar. It is necessary to send a message that the law is important; constitutional rights are important; a person is innocent until proven guilty and unless a crime is committed, a person should not have to go to court to defend themselves. This is a dilemma.

SEN. AUBYN CURTISS questioned whether the language should state that a person on the premises where alcohol is being consumed would have to submit to a breathalyzer test.

CHAIRMAN GRIMES liked the concept but noted there could be a constitutional issue as to whether or not this would be search and seizure. The refusal issue could be a problematic.

SEN. GERALD PEASE was uncomfortable with the bill. This is more of a possession law versus a consumption law.

CHAIRMAN GRIMES appointed a Subcommittee to review HB 61. The members included: **SEN. PERRY, SEN. GRIMES, and SEN. PEASE.**

Motion/Vote: **SEN. O'NEIL** moved that **HB 61 BE INDEFINITELY POSTPONED.** The motion carried with **SEN. CROMLEY** voting no.

EXECUTIVE ACTION ON HB 247

Motion: **SEN. CROMLEY** moved that **HB 247 BE CONCURRED IN.**

Substitute Motion: **SEN. CROMLEY** moved that **HB 247 BE AMENDED.**

Discussion:

SEN. CROMLEY explained his amendment would be on page 3, line 2. He would change the word "loitering" to "remaining". Disorderly persons should be removed, whether or not they are loitering. The authorities should have the power to remove the disorderly persons.

Vote: The motion carried with **SEN. MCGEE** voting no.

Motion: **SEN. CROMLEY** moved that **HB 247 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. WHEAT explained that the reason for the bill is that a woman in Bozeman was charged with vagrancy, even though the Supreme Court has held vagrancy laws to be unconstitutionally vague. It took five or six months for the case to work it's way through the courts before the charges against the woman were dismissed.

{Tape: 4; Side: A}

SEN. MCGEE remarked that the fact that the courts have made a ruling does not mean that the ruling needs to be automatically

placed into code. He does not believe it is the function of the Legislature to rubber stamp court decisions. If it is necessary to define the word "vagrancy", the Legislature may choose to do so. If the Legislature then chooses to make vagrancy a crime, it can do so as well.

SEN. PERRY claimed Webster's Dictionary defined vagrancy as one who has no established residence and wanders idly from place to place without lawful or visible means of support.

Ms. Lane pointed out the bill would prohibit a local government unit from enacting ordinances prohibiting or penalizing vagrancy. The state would be stating that local governments could not do so.

Substitute Motion: **SEN. MCGEE** moved that **HB 247 BE INDEFINITELY POSTPONED.**

Discussion:

SEN. CROMLEY remarked that cities cannot enact or enforce ordinances prohibiting or penalizing vagrancy because these ordinances would be unconstitutional. This bill merely tells the cities they cannot do so.

SEN. CURTISS raised a concern in regard to prohibiting local governments from doing what they need to do. However vagrancy is defined, that type of behavior is unacceptable. People feel intimidated by people who have no purpose for being where they are. Tools needed by local governments should not be taken away from them.

Vote: The motion carried with **SEN. CROMLEY** and **SEN. O'NEIL** voting no.

ADJOURNMENT

Adjournment: 12:20 P.M.

SEN. DUANE GRIMES, Chairman

JUDY KEINTZ, Secretary

DG/JK

EXHIBIT (jus59aad)